IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shri Kalka Crushing Plant. Versus Sanjay Road Lines, Rabcha.

S.B. Criminal Misc. Petition No. 1063/2005.

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Date of Order: January 25, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.N. Mohanani, for the petitioner.
Mr. Sunil Mehta, for the non-petitioner.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has challenged the order dated 2-9-2005 passed by the Additional Sessions Judge, Nathdwara (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 1/2005, whereby the revision petition filed by the petitioner against the order dated 6-12-2004 passed by the Additional Chief Judicial Magistrate, Nathdwara (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Courts below.

Complainant/non-petitioner filed a complaint under

Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) against the petitioner. During pendency of the complaint, the complainant himself appeared as a witness and he was subjected to cross-examination by the petitioner.

It is contended by the learned counsel for the petitioner that the complainant/non-petitioner, in his cross-examination, admitted that certain receipts have been issued with regard to supply of Gitties. So far as the cross-examination to the extent of the receipts regarding supply of Gitties, the witness was subjected to cross-examination; however, by an application under Section 311 of the Code, the accused-petitioner seeks to recall the complainant for cross-examination with regard to the receipt in respect of supply of Gitties. Learned counsel submits that since the complainant admitted that he is in possession of the receipt, therefore, he may be recalled for further cross-examination along with the receipts.

The petitioner came with the case that the cheque in question was issued by him, not in the discharge of debt or legal liability but it was for security purpose. This fact that the cheque in question was not issued for the debt or legal liability but for security purpose, has to be established by the petitioner by leading evidence and the burden to prove this fact lies on the accused-petitioner and not on the complainant/non-petitioner.

So far as recalling the complainant/non-petitioner for

further cross-examination is concerned, I do not find any good ground for recalling the witness. For production of the receipts, if any, it is always open for the petitioner to move for production thereof by separate proceeding, but not by recalling the witness. Since both the Courts below did not find any ground to recall the witness, in my view, no case for interference in the inherent jurisdiction is made out.

The criminal miscellaneous petition is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs